

1 HONORABLE RONALD B. LEIGHTON
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4 09-CV-05032-ORD
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 SHIN-ETSU HANDOTAI AMERICA, INC.,

No. 09-05032 RBL

11 Plaintiff,

STIPULATED
12 vs.
13 PROTECTIVE ORDER

NIBCO, INC.,

14 Defendant.

15 Based on the stipulation of the parties, it is hereby ORDERED as follows:

16 1. Irrespective of the form in which discovery materials are produced, including
17 printed or electronically recorded documents, in connection with the discovery process in the
18 above-entitled case, including but not limited to, deposition testimony, answers to
19 interrogatories, documents produced in response to requests for production, responses to
20 requests for production and requests for admissions, records and any documents recorded on
21 computer disks, the parties may designate any such materials as "Confidential" or "Trade
22 Secret", under the terms of this stipulated order.

23 STIPULATED PROTECTIVE ORDER - PAGE 1

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1 2. Any Discovery Material may in good faith be designated "Confidential" or
2 "Trade Secret" if it reflects, refers to, or evidences confidential technical information,
3 scientific data, technical drawings, plans, sketches, or computer code; confidential or
4 proprietary product or process information; confidential or proprietary business plans,
5 forecasts, or data; confidential or proprietary financial plans, forecasts, or data; confidential or
6 proprietary operational plans, forecasts, or data; sensitive commercial, financial, customer,
7 personnel, or personal information; or if it is deemed confidential by any state or federal
8 statute or regulation. Nothing shall be regarded as "Confidential" or "Trade Secret" if: (1) it
9 is in the public domain at the time of disclosure, or (2) except as provided in paragraph 6, it
10 becomes a part of the public domain through no fault of the Receiving Party, or (3) the
11 Receiving Party can show that the information already was in its rightful and lawful
12 possession at the time of disclosure, or (4) the Receiving Party lawfully receives the
13 information, without restriction as to disclosure, from a third party who has the right to make
14 such disclosure to the Receiving Party at the time of disclosure.

15 3. Any person subject to this order who receives any confidential discovery
16 material in the course of discovery in this action shall not disclose such confidential discovery
17 material to anyone else except as expressly permitted by this order.

18 4. With respect to the confidential or trade secret portion of any documents or
19 material, other than deposition transcripts and exhibits, the producing party may designate the
20 portion as confidential discovery material by stamping or otherwise clearly marking the
21 protected page, passage, or item as "Confidential" or "Trade Secret" in such a manner that
22 will not interfere with legibility or audibility.

1 5. With respect to deposition transcripts and exhibits, a party may indicate on the
2 record that a question calls for confidential discovery material, in which case the text in the
3 transcript where these questions or answers occur shall be specially marked as a separate page
4 stamped "Confidential Information Governed By Protective Order" by the court reporter. For
5 convenience, a party may temporarily designate that an entire deposition transcript shall be
6 treated as confidential discovery material. Such a temporary designation of an entire
7 transcript shall expire after 30 days, during which time the designating party may narrow the
8 designation to the specific transcript pages containing "Confidential" or "Trade Secret"
9 information.

10 6. If at any time prior to the trial of this action a party realizes that previously
11 undesignated documents or other material should be designated as confidential discovery
12 material, the party may so designate by advising all other parties in writing. The designated
13 documents or material will thereafter be treated as confidential discovery material pursuant to
14 this order. However, no party shall be penalized in any way for disclosing such materials
15 prior to receiving notice of this belated realization.

16 7. No person subject to this order other than the designating party shall disclose
17 any confidential discovery material to any other person, except as follows:

18 (a) The parties, and their employees, representatives or agents involved in the
19 preparation, prosecution, evaluation or defense of this case.

20 (b) Counsel for the parties in this action, including any paralegal, clerical,
21 consulting, professional and other staff employed or retained by counsel for work on this
22 action;

1 (c) With respect to a specific document, the document's author, addressees, and
2 any other person shown on the face of the document as having received a copy;

3 (d) Any witness who counsel for a party in good faith believes may be called to
4 testify at trial or deposition in this action, provided such person has first executed a non-
5 disclosure agreement in the form attached to this order as Exhibit "A";

6 (e) Any person retained by a party to serve as an expert consultant, technical IT
7 expert, or witness or otherwise provide specialized advice to counsel in connection with this
8 action, provided such person has first executed a non-disclosure agreement in the form
9 attached;

10 (f) Official court reporters;

11 (g) The court, mediators, and support personnel; and

12 (h) Insurers and indemnitors to the extent reasonably necessary to defend and
13 evaluate plaintiff's claims.

14 8. Prior to any disclosure of confidential discovery material to any person
15 referred to in subparagraphs (d) or (e) of paragraph 7 above, the person shall be provided by
16 counsel with a copy of this protective order and shall sign a non-disclosure agreement in the
17 form attached as Exhibit A hereto. The non-disclosure agreement will state that the person
18 has read this order and agrees to be bound by its terms. All non-disclosure agreements will be
19 maintained through out this action by the attorneys obtaining them. At the conclusion of this
20 action, upon a showing of good cause and necessity, any party may seek an order requiring
21 production of non-disclosure agreements, but nothing in this order is intended to modify or
22 shift any burden of proof or privilege relating to the motion.

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STIPULATED PROTECTIVE ORDER - PAGE 4

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1 9. To the extent allowed by applicable law, defendant will prepare and file a
2 motion to have all confidential discovery material filed under seal, including any portion of a
3 court paper that discloses confidential discovery material. When filing the motion, defendant
4 will cite to the court the legal grounds for filing the confidential discovery material under seal.
5 The parties agree that any motion will be narrow in scope to ensure that the only information
6 withheld from public inspection is information expressly authorized by law.

7 10. If any attorney files with or submits to the court any confidential (a)
8 documents, responses, transcripts or things as defined by this order, or information derived
9 there from, or (b) any affidavits, memoranda, exhibits or other papers containing or making
10 reference to any such confidential documents, responses, transcripts or things, or any
11 information contained therein, then such attorney shall first consider whether redacting
12 portions of such materials that contain or refer to confidential information is practical and will
13 protect the confidential information while leaving other non-confidential information
14 meaningful, as required by *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir.
15 2003). If so, redacted versions of such material shall be filed with the court according to the
16 standard filing procedures.

17 11. Any party objecting to any designation of confidentiality or trade secret, or
18 requesting further limits on disclosure (such as "attorney eyes only" in extraordinary
19 circumstances), may at any time prior to the trial of this action serve upon counsel for interest
20 parties a written notice stating with particularity the reasons for the objection or request. If
21 agreement cannot promptly be reached, the dispute will be submitted to the court. Until a
22 dispute is resolved, the material designated as "Confidential" or "Trade Secret" shall remain
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1 as confidential discovery material pursuant to this order. The party requesting confidentiality
2 shall have the burden of establishing entitlement to protection and confidentiality.

3 12. The court retains discretion to deny confidential treatment to any documents or
4 discovery material submitted in connection with any motion, application, proceeding or paper
5 that may result in an order or decision by the court.

6 13. Each person who has access to confidential discovery materials shall take all
7 due precautions to prevent the unauthorized or inadvertent disclosure of the material.

8 14. This order shall survive the termination of this action. Within 30 days of the
9 final disposition of this action, all confidential discovery material, and all copies, shall
10 promptly be returned to the producing party or, with the permission of the producing party,
11 destroyed; however, if objections to confidentiality are then asserted, return of the
12 confidential discovery material shall depend upon final resolution of the objections.
13 Attorney-client privileged and work product materials need not be disclosed to other parties
14 after termination of this action.

15 15. The court shall retain jurisdiction over all persons and parties subject to this
16 order to the extent necessary to modify this order, enforce its obligations, or to impose
17 sanctions for any violation.

18 16. Nothing in this order shall prevent any party from seeking further or additional
19 protection, or removing protection, for confidential discovery material.

20 17. Additional parties may be added to this action as allowed under the Federal
21 Rules of Civil Procedure. Before receiving confidential discovery material, a new party must
22 agree to be bound by the terms of this order as if the party had stipulated to it at the time of
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1 entry. No newly added party shall have access to confidential discovery material until the
2 party is subject to the terms of this order.

3 18. Information of any kind obtained by parties subject to this order from any
4 source outside of discovery in this action shall not be subject to the terms of this order,
5 notwithstanding that the same information has been produced in this action and designated as
6 confidential discovery material.

7 20. This order shall not apply to, or restrict confidential discovery material used at
8 the time of trial as evidence. Protection of confidential discovery material at trial may be
9 addressed by the court as a separate matter upon the motion of any party. The provisions of
10 this order shall not prejudice the rights of the parties with respect to the use or protection of
11 confidential discovery material at trial.

12 21. Inadvertent production or other disclosure of documents subject to work-
13 product immunity, the attorney-client privilege or other legal privilege that protects
14 information from discovery shall not constitute a waiver of the immunity, privilege, or other
15 protection, provided that the producing party notifies the receiving party in writing as soon as
16 it confirms such inadvertent production. Copies of such inadvertently produced privileged
17 and/or protected document(s) shall be returned to the producing party or destroyed
18 immediately upon notice of privilege and any information regarding the content of the
19 document(s) shall be deleted from any litigation support or other database and is forbidden
20 from disclosure and forbidden from use in this action or for any other reason at all. Any party
21 or individual having inadvertently received privileged or protected information need not wait
22 for notice from the producing party before complying with the above and is expected to
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1 comply with the requirements of this paragraph as soon as it is known or should be known,
2 that the document and information contained therein, is privileged and/or protected. The
3 parties shall have the benefit of all limitations on waiver afforded by Federal Rules of
4 Evidence 502. Any inadvertent disclosure of privileged information shall not operate as a
5 waiver in any other federal or state proceeding, and the parties' agreement regarding the effect
6 of inadvertent disclosure of privileged information shall be binding on non-parties.

7

8 Date: August 14, 2009

ELLIOTT, OSTRANDER & PRESTON, P.C.

9

10 By: 

William A. Drew, OSB # 952539
Attorneys for Plaintiff

11

12 Date: August 14, 2009

FORSBERG & UMLAUF, P.S.

13

14 By: 

John P. Hayes, WSBA #21009
Patrick G. Middleton, WSBA #12113
Kenneth M. Roessler, WSBA #31886
Attorneys for Defendant, NIBCO, Inc.

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17 ORDER

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19 IT IS SO ORDERED.

20 DATED this 16th day of September, 2009.

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23 Hon. Ronald B. Leighton

STIPULATED PROTECTIVE ORDER - PAGE 8

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1 U.S. District Court Judge
2

3 Presented by:
4

5 FORSBERG & UMLAUF, P.S.
6

7 By: _____
John P. Hayes, WSBA #
Patrick G. Middleton, WSBA #
Kenneth M. Roessler, WSBA #31886
8 Attorneys for Defendant, NIBCO, Inc.

9
10
11 Copy Received; Approved for Entry:

12 ELLIOTT OSTRANDER & PRESTON, P.C.
13

14 By: _____
15 William A. Drew, OSB # 952539
16 Attorneys for Plaintiff

17
18 EXHIBIT "A"
19 ACKNOWLEDGEMENT OF STIPULATED QUALIFIED PROTECTIVE ORDER
20

21 I, _____, acknowledge that I have read and understand the
22 Stipulated Qualified Protective Order in this action governing the non-disclosure of those
23 portions of Discovery Material that have been designated as Confidential or Trade Secret. I
agree that I will not disclose such Discovery Material to anyone other than for purposes of

STIPULATED PROTECTIVE ORDER - PAGE 9

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1 this action and that at the conclusion of the action I will return all such Discovery Material to
2 the party or attorney from whom I received it. By acknowledging these obligations under the
3 Stipulated Qualified Protective Order, I understand that I am submitting myself to the
4 jurisdiction of the United States District Court for the Western District of Washington for the
5 purpose of any issue or dispute arising hereunder and that my willful violation of any term of
6 the Protective Order could subject me to punishment for contempt of Court.

7 Dated: _____

8 Signature _____
9

10 Printed Name _____
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